WRITTEN STATEMENT OF THE AMERICAN ASSOCIATION
OF ATTORNEY-CERTIFIED PUBLIC ACCOUNTANTS (AAACPA)
ON EFFECTIVE COLLECTION STRATEGIES
BEFORE THE OVERSIGHT BOARD OF THE INTERNAL REVENUE SERVICE

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Introduction

The American Association of Attorney-Certified Public Accountants is pleased to have the opportunity to comment on Effective Collection Strategies for the Internal Revenue Service. The AAACPA, observing its 40th year, is uniquely composed of individuals who are both attorneys and certified public accountants. Included among its members are many of the best known tax practitioners in the country.

Recent Improvements

The AAACPA applauds certain improvements in the Internal Revenue Service collection function in recent years. These improvements include:

- An ability to obtain installment agreements in many cases by written request (filing of Form 9465) or by routine telephone contact
- An ability generally to obtain a taxpayer statement of account and/or information return transcripts by routine telephone contact with the Practitioner Hotline (although we understand they are not being made available if a case is being handled by ACS)
- More effective challenges to bankruptcies in cases of willful evasion of taxes by the individual

Global Issues

As taxpaying citizens, members of the AAACPA share the concern of the Internal Revenue Service and the public at large with the substantial tax liability which goes uncollected. The AAACPA believes that better administration of the collection function will serve to enhance revenue realization. Better administration must be coupled with both principals of fundamental fairness and business judgment.

Collection Inactivity

The AAACPA encourages a greater budget for enforcement activities by the Internal Revenue Service including the collection function. The AAACPA is concerned about the time taken by the Internal Revenue Service to identify delinquent taxpayers and to commence collection activity as a result of the shortage of funds. There is a prevailing attitude among business taxpayers with "cash flow" problems that employees, suppliers and other creditors can be paid first and that the Internal Revenue Service can be paid later. There is a similar prevailing attitude among individual taxpayers with "cash flow" problems that all other bills can be paid first and that the Internal Revenue Service can be paid later. Once a taxpayer skips paying for one quarter - whether it's a personal estimated tax payment or tax deposits of employee withholding and employer matches - the taxpayer sees that it is easy to delay required payments. One quarter quickly becomes one year and one year quickly becomes two or more years. By that point, late filing, late payment and interest charges abound and many taxpayers, before their initial contact from the IRS, will never be able to full pay.

The Internal Revenue Service needs vigorous efforts in the following areas:

- Education of taxpayers at the time of issuance of a taxpayer identification number as to the filing and paying obligations associated with the particular type of entity, the penalties associated with noncompliance and the trust responsibilities associated with payroll taxes

- Adding resources or shifting resources to permit quick identification and correction of nonfilers based on prior filing activity and nonpayers based on prior paying activity

Once liabilities have been assessed, the largest balances require the attention of a revenue officer in the geographical vicinity of the taxpayer. Many taxpayers who can pay do not pay because the Service is not properly distinguishing them from those who do not pay because they cannot. The 10-year statute of limitations on collections is allowed to expire - even on large balances - in the case of people who can pay without a whisker of collection activity.

Additionally, the 3-year statute of limitations on assessment of the Trust Fund Recovery against responsible individuals often passes because the IRS often does not timely identify those potentially liable for the nonpayment of trust fund taxes by limited liability entities delinquent in their payroll taxes.

The Internal Revenue Service needs vigorous efforts in the following areas:

- Step-up of collection activity in the years immediately preceding expiration of the statute of limitations

- Filing of suit in cases where taxpayers with substantial assets are identified prior to expiration of the statute of limitations

- Earlier identification in all payroll tax cases of those potentially responsible and of last dates of assessment in order that no statute of limitations on individual assessment of trust fund taxes be inadvertently missed

Offers in Compromise

The AAACPA is concerned about the continued lengthy time period to process Offers in Compromise. One of our members reported that one of his clients who submitted an Offer involving a modest amount of unpaid individual income tax liability gave up after more than three years of reassigned responsibility, multiple document requests and many broken promises as to the timeframe for completion. The client filed bankruptcy to discharge the liability.

Concerning Offers submitted based on doubt as to collectibility, the AAACPA strongly opposes the proposed Rejection with Options. See Attachment 1. By having the first contact by an Examiner be a rejection allowing a mere 30 days to attempt to negotiate with the Examiner and his/her manager and to file an appeal is unwieldy. It puts together too many steps. The AAACPA believes the new process will result in many more cases going to Appeals (already a number which is too high) which could have been worked out by the Examiner and Manager. In addition, many taxpayers will find themselves without appeal because the Rejection with Options becomes confusing.

The AAACPA is concerned that about three-fourths of processible Offers submitted based on doubt as to collectibility were rejected during fiscal 2002. This compares to about 40 percent for the preceding year. The IRS does not keep any statistics or information whatsoever on returned or rejected cases to determine the money that could have been raised through acceptance and whether it ultimately rejected an offer for more money than actually collected or vice versa. The IRS has not even made a statistical sampling of what transpires subsequent to an Offer being rejected or returned. The IRS should determine (whether through complete tracking or statistical sampling) how much it ultimately collects from processible cases returned, withdrawn or rejected. This will lead in the future to more sound policies on acceptance or rejection of Offers.

The AAACPA believes that awaited guidance to be issued on Offers based on Effective Tax Administration (ETA) must consider the age of the offeree. Many older individuals within ten years of retirement age cannot achieve acceptance of an Offer due to equity in a house or an income level showing some ability to pay under the national and local guidelines. The hardship component of ETA needs special considerations for individuals approaching retirement age who lack the means to support themselves in retirement and who would otherwise lose all equity in assets and, for a period of years, all disposable income or the equivalent. Failure to consider age as a special circumstance in

effective tax administration could create hundreds of thousands of individuals needing public assistance in their old age.

Based on the illustration set forth above, for example, the AAACPA believes that sound business sense mandates considering the likelihood that the taxpayer can discharge a tax obligation in bankruptcy.

Allowable Expenses (Offers and Installment Agreements)

The AAACPA is concerned as to the computation or disallowance of certain expenses in computing a taxpayer's disposable income for Offer and installment agreement purposes. See Attachment 2. The items of concern largely involve issues of fairness and include:

- Delinquent state income taxes – The IRS is not allowing installment agreements with state tax authorities as a necessary expense
- Housing – The cost of housing for a taxpayer with a history of Federal tax liens is higher, on average, than in the case of the population in general, and the added cost is not taken into account in computing the guidelines
- Moving costs – Where housing expense is greater than allowable under the guidelines, the IRS takes the position that the taxpayer should move to a home within the guidelines (but no expense is allowed for moving expenses)
- College costs – The AAACPA believes that the cost of a child's college today is a necessary expense (but should be limited to costs of the in-state university system)
- Transportation standards – We are advised that the transportation standards assume commuting of only 32.5 miles per day; a taxpayer with a longer commute (often to avoid greater housing costs) is currently not allowed a higher standard
- Credit card bills – Many taxpayers have utilized credit cards for their basic living needs in the past, but these credit card payments (even if the minimum required amounts) are disallowed

Collection Information Statements

The AAACPA is concerned about the rigorous data required on Forms 433-A and 433-B in routine cases. We urge that use of these forms (as opposed to the one-page Form 433-F, for example) be limited to taxpayers seeking an Offer in Compromise or to cases involving $100,000 or more in outstanding liability for which the IRS has reason to request more detailed information. See Attachment 3.

The AAACPA is concerned about the lack of clarity in the instructions regarding property owned jointly by a debtor taxpayer and a nondebtor spouse. While the IRS wishes in practice ownership information only on the taxpayer but wishes "family" income information, the instructions lack guidance on this frequently recurring issue.

Communications with the IRS

Our members advise that written communications to the IRS, unless addressed to a Revenue Officer assigned a case, go unanswered and unacknowledged a very high percentage of the time. This is an area which has not improved over the years and decades and begs for correction. The IRS reorganization has perhaps made this problem worse, as taxpayers not responding to a specific communication do not know to which address to write (or to which phone number to call). Successive correspondence from the IRS may bear different response addresses and phone numbers.

When correspondence is acknowledged by the IRS to the Taxpayer Representative, it may lack a taxpayer name and identification number making it not possible for the practitioner to match a response to the taxpayer file.

The biggest problems in communication from the IRS are the unfair response deadlines. In recent months a trend appears to exist in which the IRS is requesting detailed responses to correspondence (requiring many hours of work) within 15 days of the date of the letter. This often leaves 10-12 days from the date of receipt to complete a response. One new notice under the Collection Due Process (CDP) program used, for example, when an installment agreement is rejected requires receipt of a request for Appeals consideration within two days of a rejection by the Revenue Officer's manager. See Attachment 4. (In Appeals, as a result of the reorganization's centralization approach and the many CDP appeals, it is often not possible to arrange a meeting with the Appeals Officer – the effect of the lack of a "face-to-face" is that more disputes will go unagreed.)

All requests from the Internal Revenue Service not governed by statute should have a 30-day response period with one additional 30-day period available if requested by the taxpayer or his/her representative. It is not possible for taxpayer representatives with full schedules which may include lengthy trials or even a vacation to meet artificially accelerated deadlines. It is appalling to be asked to do so when the IRS has "sat on a matter" for many months. See Attachment 5 for examples of the time issues. To the extent that IRS personnel are judged on processing time, statistics can be adjusted to reflect delays attributable to practitioner or taxpayer requests.

The AAACPA feels the Notice of Intent to Levy is overused, being sent in cases where there is no intent to levy. The notice is being sent even when the case is controlled by a Revenue Officer. The notice is misleading as it may cause an individual to believe that there will be a levy on all of his or her assets. However, reading the entire notice reveals that the levy is only being made on a taxpayer's state income tax refund. The AAACPA has previously suggested changes to the notice. Although the IRS had agreed to change the notice, this has not been done. See Attachment 6.

The AAACPA has been very involved in providing input to the Service regarding the redesign and contents of letters to taxpayers. The Association is concerned that the Third Party Contacts Notification falls short of true reform, leaving taxpayers clueless about the timing of possible third-party contacts, and are still used in cases where there is no specific intent to make a third-party contact. These notifications should not be unlimited in time but should have an outside date listed on each notice after which no third-party contacts would be made without an additional notification.

Craft Case

In the 2002 case of United States v. Craft, 122 S. Ct. 1414, the U.S. Supreme Court determined that an IRS lien in "common law" states attaches to a debtor's interest in tenants by the entireties (TBE) property owned with a nondebtor spouse even if two signatures (husband and wife) are required to effectuate a conveyance of or a mortgage against the property.

The case left open many questions including whether the IRS can foreclose upon such TBE property, whether the IRS lien is extinguished upon the death of the debtor spouse and the passing of the property by operation of law solely to the nondebtor spouse and the comparative valuations of the interests of the debtor and nondebtor spouses. The continuing uncertainties arising from Craft are unfair to nonliable spouses (and leave title insurance companies in a quandary as well). The IRS needs to set forth its post-Craft collection positions promptly. They need to balance the needs of the Internal Revenue Service to collect from the debtor spouse with fundamental fairness for the other spouse (who is not only an innocent spouse but also a nonliable spouse).

Everyday Tax Solutions

The AAACPA has long been an advocate of Problem Solving Days. The Association believes that the elimination of the Problem Solving Days leaves a gap in IRS solution tools. The lack of response to the most recent Problem Solving Days, in our opinion was due to poor publicity and a reduction in service at the Problem Solving Days themselves.

The AAACPA is cautiously optimistic about the personal-meetings component of the Everyday Tax Solutions program. We believe the program should receive much greater publicity and that the authority of issues covered be expanded to cover all issues previously covered at Problem Solving Days. Current IRS policy does not require that the taxpayer/practitioner participating in an Everyday Tax Solutions meeting receive written acknowledgment of the actions agreed to at the meting. The AAACPA believes that a written acknowledgment, similar to the early Problem Solving Days run by the Taxpayer's Advocate Office, should be standard.